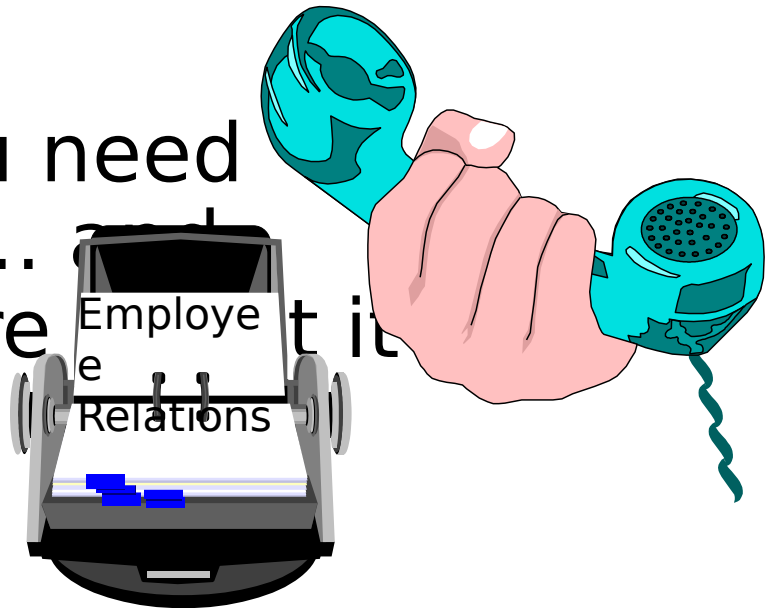
A Supervisory Guide Managing Employees

Carmen Francis, CPAC, 787-3748

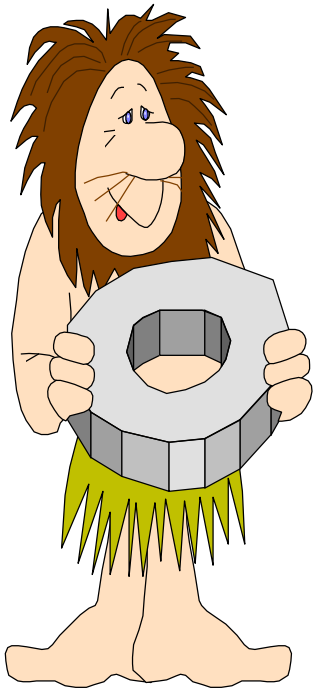
GOALS OF THIS PRESENTATION

- Highlight related supervisory and managerial responsibilities with regard to discipline, leave, TAPES and recruitment
- Identify when you need to get help... and where to get it

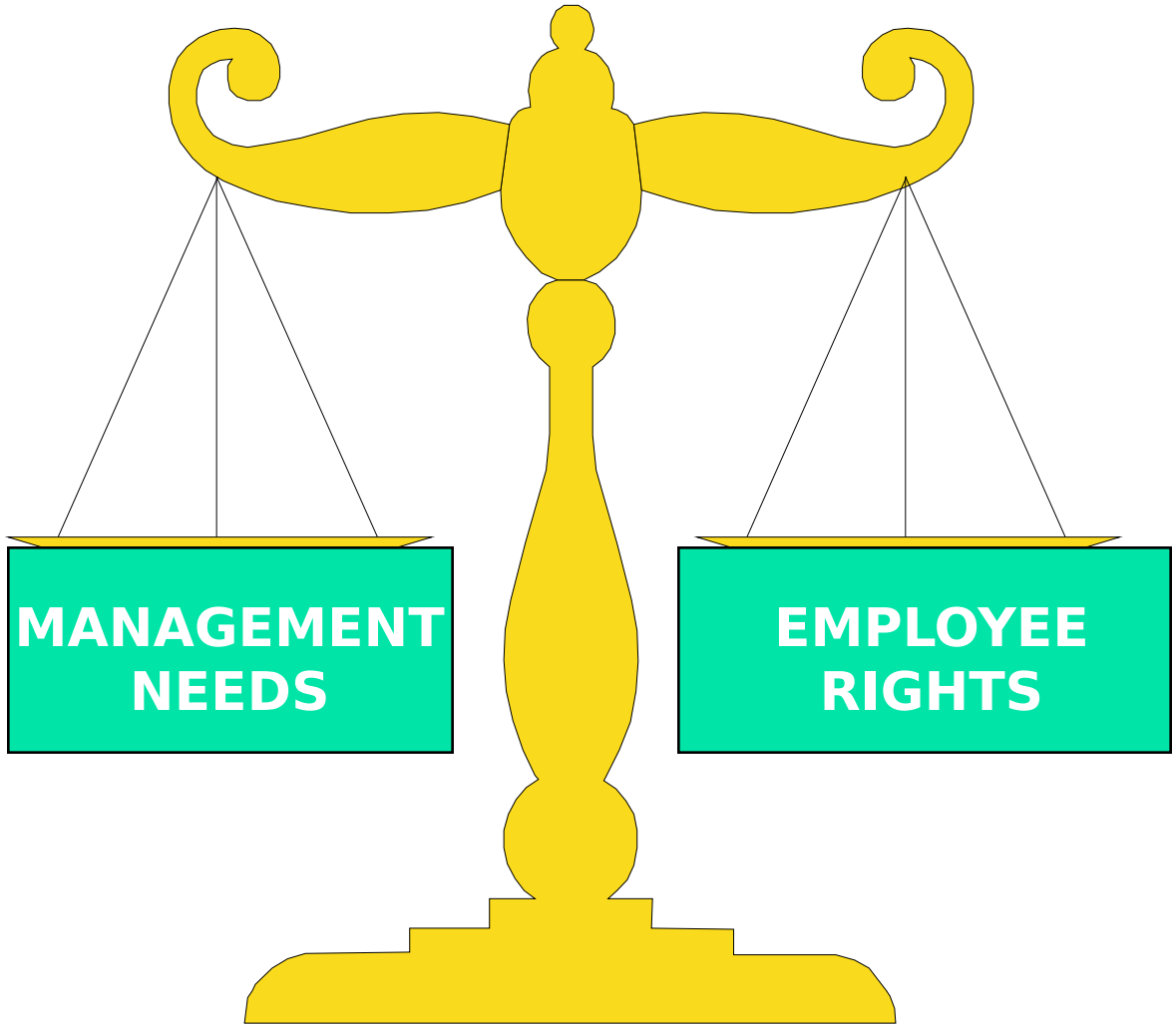


Role of Employee Relations

- Guide and Assist Management
  - discipline
    - grievance process
    - appeals process
  - leave & attendance
  - TAPES
  - Preparation of Disciplinary & Adverse Action Notices
- Advise Employees of Rights



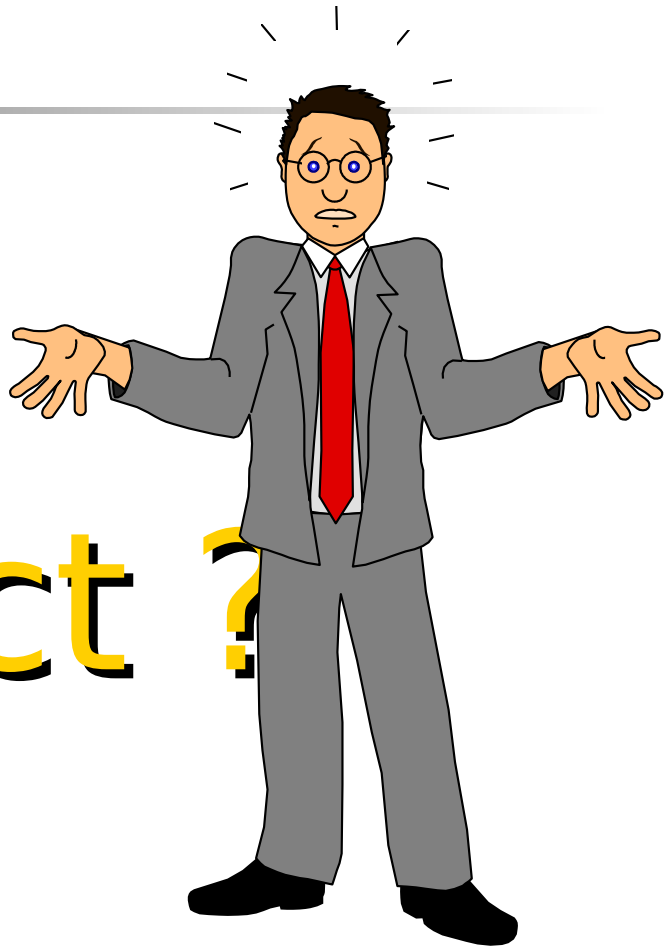
THE BALANCE



MYTH

It’s far too difficult to take an adverse action against a Federal employee.

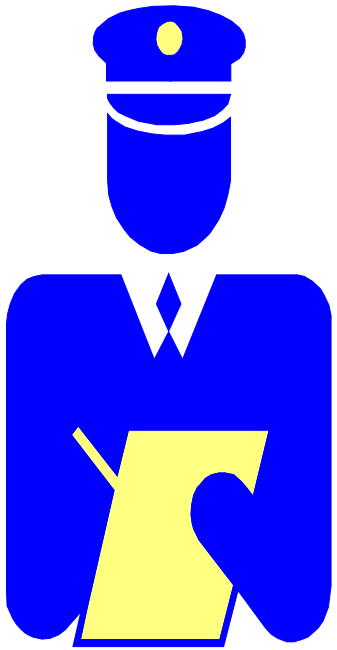
What is Misconduct ?



Misconduct

- Violation of Employment Expectations
- Failure to follow law, rule, regulation, policy, directive, instruction, or order
- Conscious; deliberate; within employee's control

Awareness



- Expectations, Requirements, Rules, Policies

- Supervisory/Managerial Responsibility

- How does the employee know what is/isn't acceptable?

THE BASICS

- MISCONDUCT
  - 5 CFR 752
  - Progressive, or Sequential
  - Preponderance of Evidence
- PERFORMANCE
  - 5 CFR 432
  - Opportunity to Improve: PIP
  - Substantial Evidence

Discipline

- a tool for management t
  use to maintain an effecti
  efficient, and orderly workplace

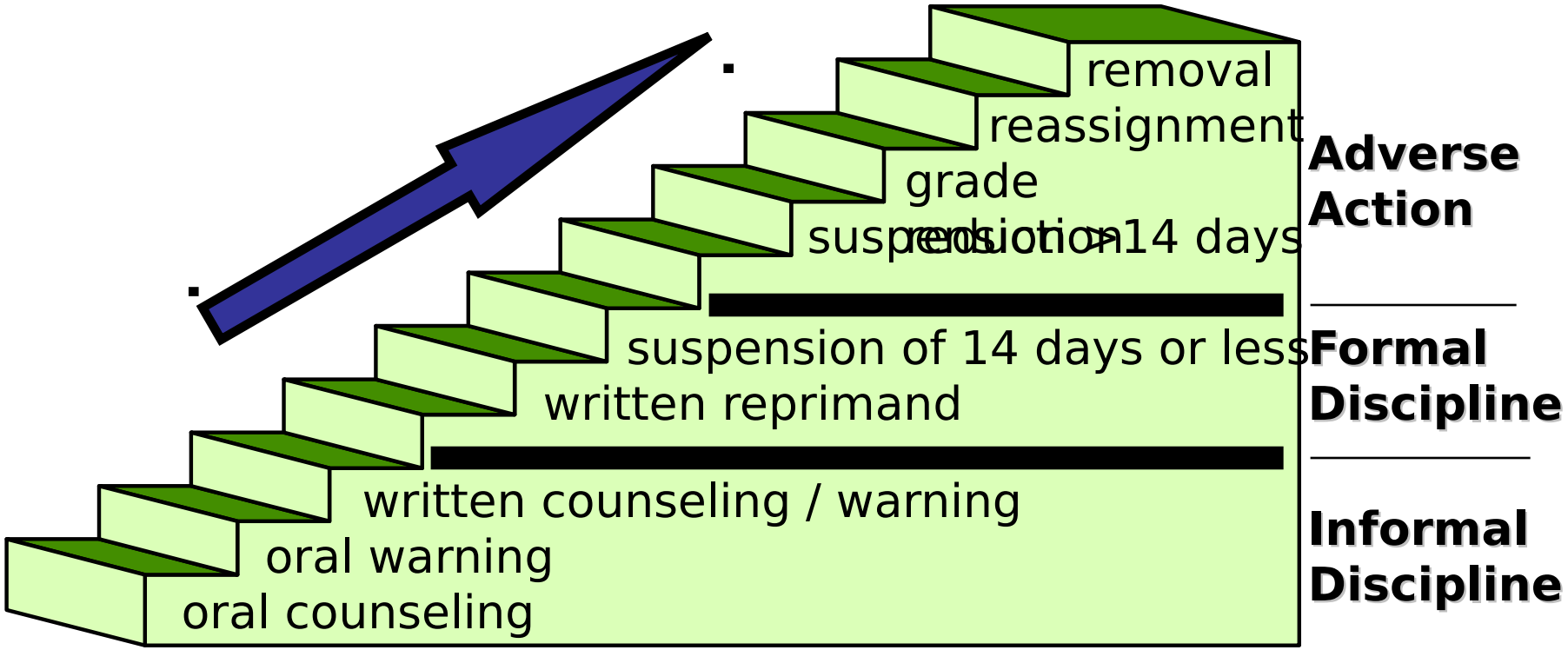
- the way Federal sector supervisors
  must deal with employee misconduct

Discipline is:

- used by supervisors to resolve the misconduct

- **Corrective** in nature

Progressive Discipline



The Basics - Key Points

- Misconduct Vs Performance
- Supervisor’s Responsibility
- Discipline is Progressive
- Discipline is Corrective
- Employee Relations Assists

EVIDENCE

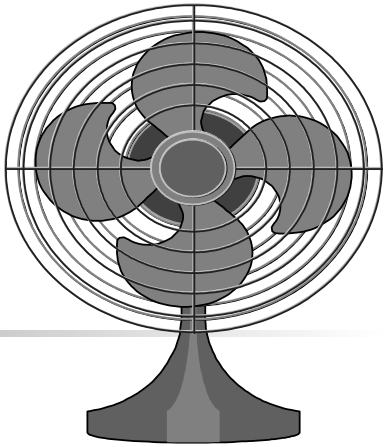
- Prerequisite for Disciplinary Action

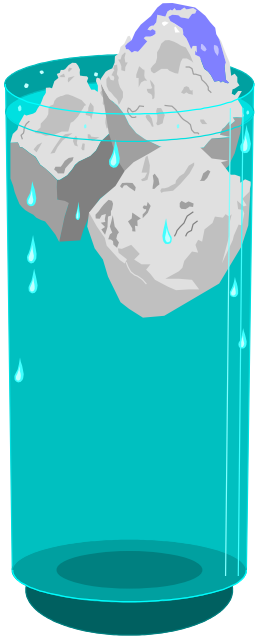
- Must prove employee engaged in misconduct

Developing Evidence

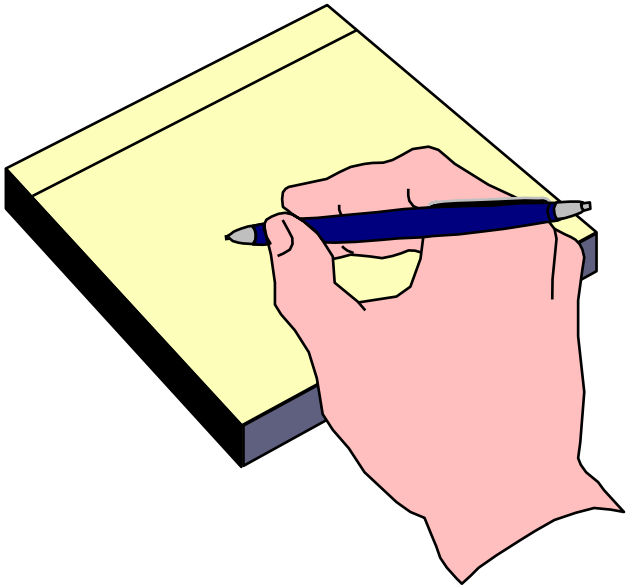
- Employee comments / statements
- Personal observation
- Interviews with others
- Police / IG Reports

CAUTION





- Be cool, objective, and thorough
- *Don't* develop opinions

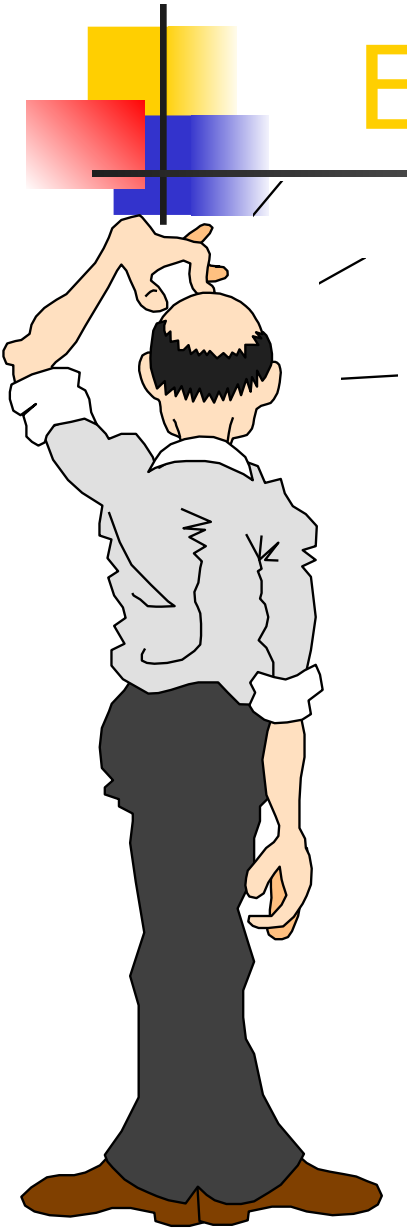


DOCUMENTATION
DOCUMENTATION
DOCUMENTATION

“THE BOTTOM LINE”

- Preponderance of the evidence
  - More likely true than not true

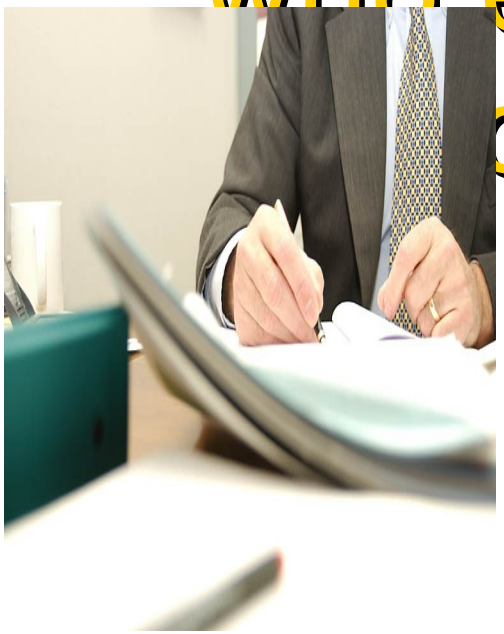
Evidence/Documentation



- Does it support
  - violation ?
  - awareness ?
- If so, it’s safe to proceed

PENALTY SELECTION

Probationary Employees who engage in misconduct

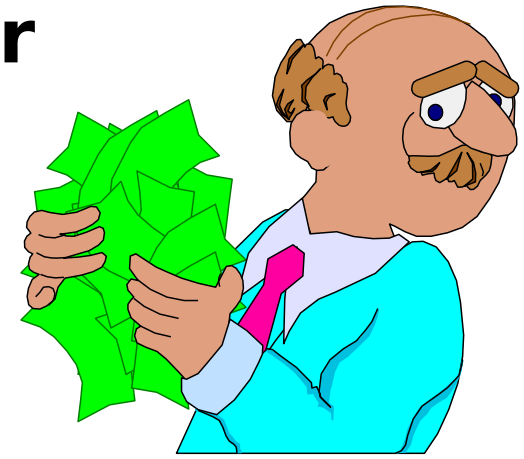


- Counseling Notice of Warning
  - If no improvement, TERMINATE appointment
  - Complete action BEFORE the end of the Probationary Period
    - Competitive Service = 1 year
    - Excepted Service = 2 years

"TWELVE" DOUGLAS FACTORS

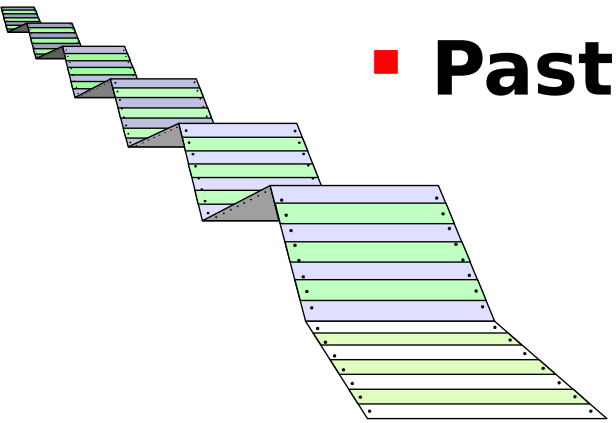
(Douglas Vs. VA, 5 MSPB 313, 1981)

- **Nature / seriousness of offense**
  - **job nexus (especially off-duty)**
  - **intentional, technical, or inadvertent**
  - **malicious or for gain**
  - **frequently repeated**



DOUGLAS FACTORS (CONT)

- **Nature of job**
  - **supervisory / fiduciary**
  - **public contact**
  - **prominence of positio**
- **Past disciplinary record**



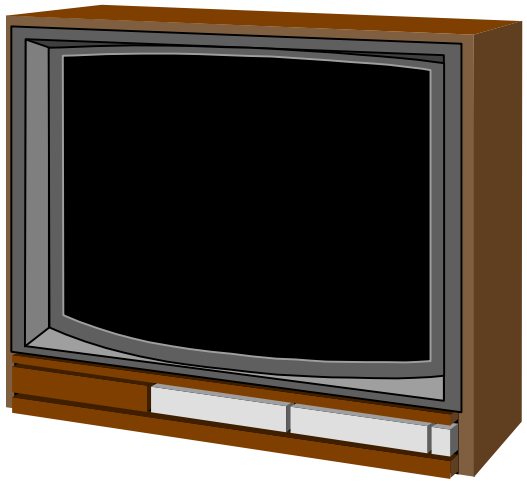
DOUGLAS FACTORS (CONT)

- **Past work record**
  - **length of service**
  - **performance & dependability**
  - **ability to get along with coworkers**

- **Effect of offense on:**
  - **ability to satisfactorily perform job**
  - **supervisor’s confidence & trust**

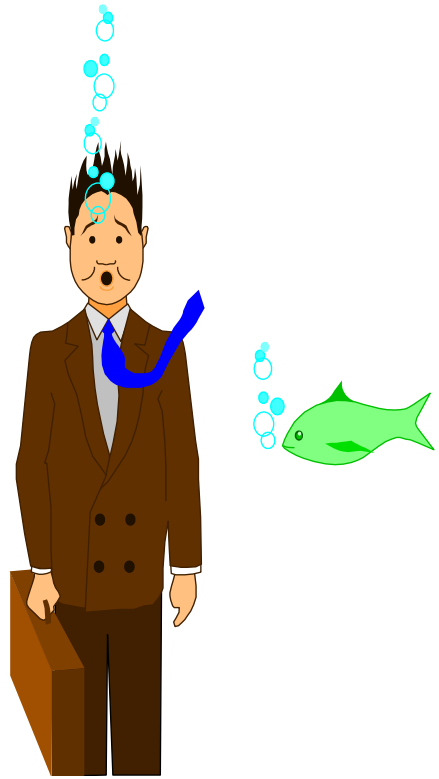
DOUGLAS FACTORS (CONT)

- **Consistency of Penalty with others imposed for same / similar offenses**
- **Consistency with Agency's Table of Penalties (AR 690-700)**
- **Notoriety of offense**
  - **impact on agency's reputation**



DOUGLAS FACTORS (CONT)

- **Prior notice of rules / warning**
- **Mitigating circumstances**
- **Adequacy & effectiveness of alternative sanctions**



DOUGLAS FACTORS (CONT)

Supervisors and fact-finders should keep the “twelve” Douglas Factors in mind when developing the FACTS of a case.

- Helps structure fact-finding
- Clarifies issues “up front”
- Reduces need to gather supplemental information

THE “CAUSE” STANDARD

- Clearly specify charge(s)
- Prove specified charge(s)
- Show nexus between charge(s) and promotion of the efficiency of the service, especially for off-duty misconduct
- Show appropriateness of penalty

TAKING ACTION

- Written Reprimand
  - One-step action
  - Supervisors assisted by HR Specialists

TAKING ACTION (CONT)

Suspensions, Removals, Reductions in Grade/Pay,
Furloughs (30 days or less)

- **Two-step process**
- **First line Supervisor issues Notice of Proposed Action***
- **Employee response to Deciding Official**
  - **normally 10 calendar days**
- **Notice of Decision by Deciding Official***
- **Action effected (?)**

*Employee Relations Assists

TAKING ACTION (CONT)

- Notices and Decisions
  - State employee rights
  - State next step in the process

- Writing Notices and Decisions*
  - Plain English
  - Simple and factual
  - As brief as possible

*Employee Relations Drafts

EMPLOYEE'S RESPONSE

- Orally and/or in writing
- Reasonable amount of official time
  - review materials
  - prepare response
  - obtain affidavits
  - reply to Deciding Official
- Right to representation

CHALLENGES

- **Adverse Actions**
- Appeal to the Merit Systems Protection Board (MSPB)
  - Filed within 30 days following effective date
  - Right to request hearing
  - Does not stay the action
  - EEO Complaint

MSPB APPEAL

- Quasi-judicial proceeding
- Decision by Administrative Judge (AJ)
  - May be appealed to “Full Board”
    - accepts (sustains, reverses or modifies)
    - rejects or remands
  - Final administrative decision
    - Courts are next step

RELATED MATTERS

- **Crime Provision**

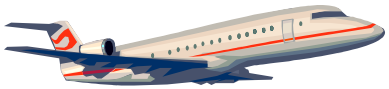
- **exception to 30 day advance notice of adverse action**
- **reasonable belief of crime that may result in imprisonment**
- **7-day response period**
- **may be in paid, non-duty status**
- **indefinite suspension or removal**

COMMON ERRORS

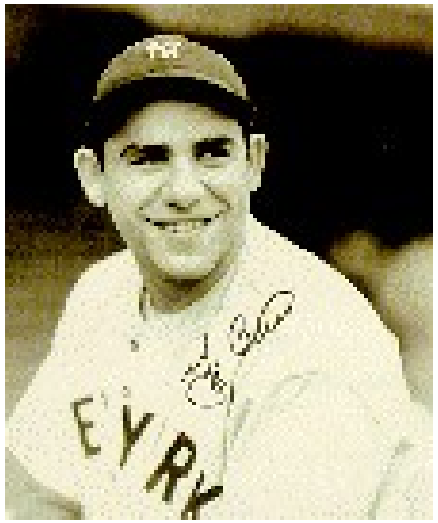
- Transferring the Problem
- Non-Douglas Reasons
- Incomplete Investigation / Facts
- Inconsistent Penalties
- Trying to “go it alone”

QUESTIONS

Managing Leave



ATTENDANCE PROBLEMS



"Stay alert. You can observe a lot by watching."

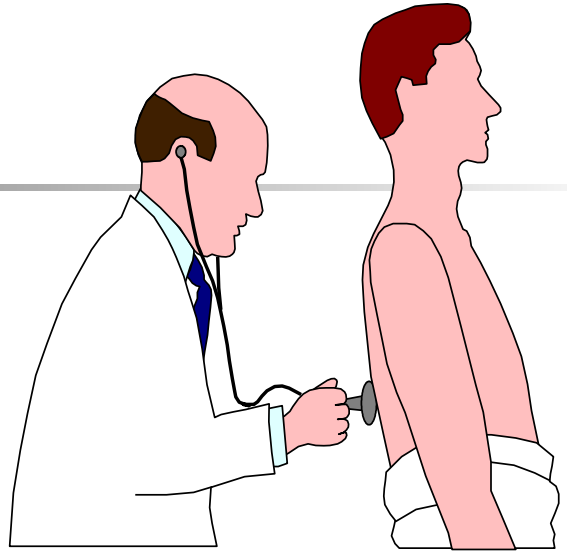
Types/Categories of Leave

- Annual
- Sick
- Leave Without Pay (LWOP)
- Absence Without Leave (AWOL)
- Advanced
- Voluntary Leave Transfer Program
- Use or Lose
- Restored
- Family Friendly
- Family & Medical
- Excused Absence
- Court
- Home
- Military

ANNUAL LEAVE

- **Accrued: 4, 6, or 8 hrs/PP (LOS)**
- **<u>May</u> be advanced**
  - **maximum: expected Leave Year earnings**
- **Employee "Right to Use" - entitlement**
- **Management "Right to Determine" - legitimate business needs**
  - **when**
  - **how much**

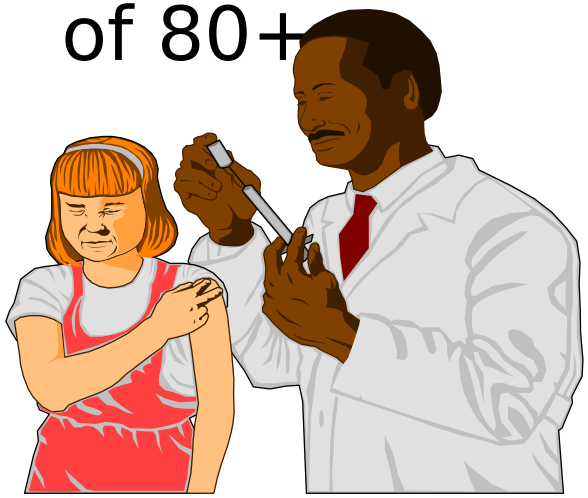
SICK LEAVE



- **Accrued: 4 hrs PP**
- **<u>May</u> be advanced**
  - **maximum: 240 hours**
- ***Incapacitated* by illness / injury**
- **Medical, dental, optical examination**

SICK LEAVE – FAMILY FRIENDLY

- Same reasons as for “self”
- Limited: portion of employee’s SL
  - accrued, advanced, or donated
  - 40 hours per Leave Year
  - 64 additional IF leave balan
    of 80+



FAMILY MEDICAL LEAVE ACT (FMLA)

- Up to 12 administrative workweeks each leave year to care for a family member with a “serious health condition.”
- Limited to a *total* of 12 weeks of sick leave for all leave family care purposes.

Sick Leave for Family Member with a Serious Health Condition

- Family Member:

  - Parent of employee, spouse, son or daughter.

  - Does not include in-laws (unless in loco parentis)

SERIOUS HEALTH CONDITION

- **Definition: illness, injury, impairment, or physical or mental condition that involves:**

  - Inpatient care in a hospital, hospice, or residential medical care facility; or continuing treatment by a health care provider.

  - Includes such conditions as cancer, heart attacks, strokes, severe injuries, Alzheimer's disease, pregnancy, and childbirth. Does not include bonding with newborn child or care for a health newborn child.

Supervisory Responsibilities

- Communicate procedures
- Ensure proper use
- Avoid conflicts with workloa
- Approve & *Disapprove* reque
- Avoid leave forfeiture
- Deal with misuse / abuse

This is managing leave

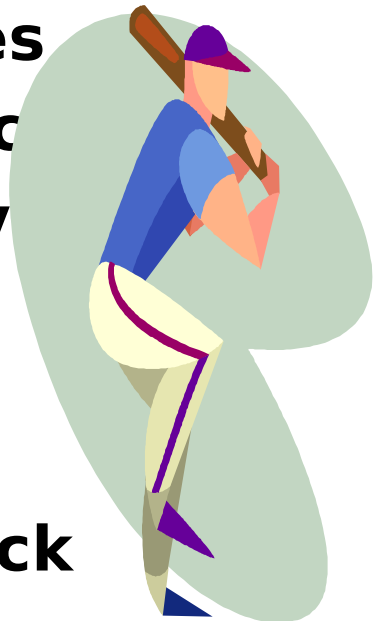
EMPLOYEE RESPONSIBILITIES

- Understand procedures
- Follow procedures
- Plan & request leave in advance
- Promptly report sick & emergency absences

EMPLOYEE RESPONSIBILITIES

Leave & Attendance Problems

- Late Arrivals
- Early Departures
- Disappearing Ac
- Monday - Friday Before & After Holidays
- “Burn-as-Earn”
- Unsupported Sick Absences



- Last Minute Requests
- Failure to Call-in
- Others Call-in
- Calls to Non-Supvs
- Frequent Breaks
- Frequent Extended Lunch Periods
- Assignments Due

How do you deal with such problems ?

Dealing with Attendance Problems

- Accommodation(s)
  - Counseling - Warning
  - Leave Restrictions
    - AWOL
    - Medical Certification
  - Disciplinary Action

AWOL vs LWOP

AWOL

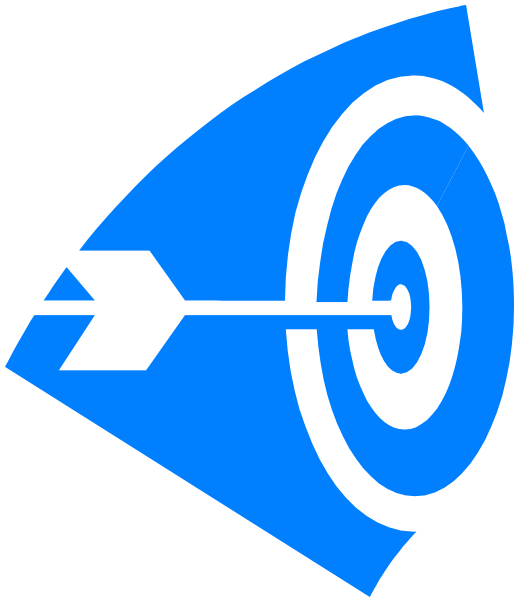
- Unapproved absence
- No pay – choice of management
- Basis for discipline
- Sends strong signal: intolerable

LWOP

- Approved absence
- No pay - choice of employee
- Seldom a basis for discipline
- Sends mixed / weak signal: tolerable

Probationary Employees

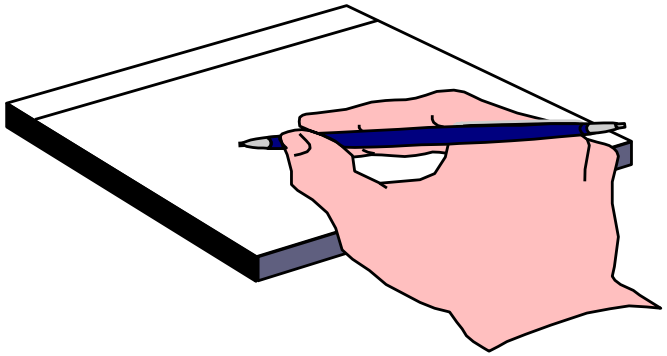
- Counsel / Notice of Warning - Maybe
- If no improvement, TERMINATE appointment
- Complete action prior to the end of the Probationary Period
  - Competitive Service = 1 year
  - Excepted Service = 2 years



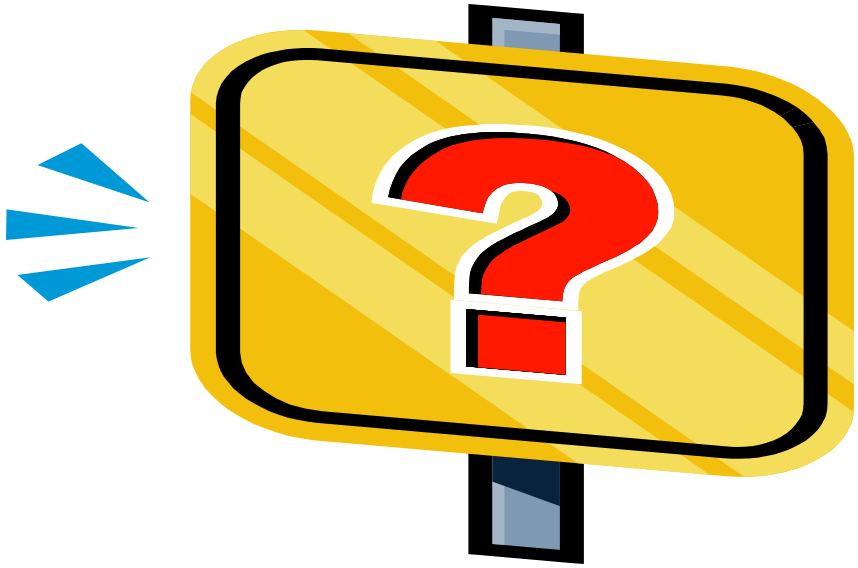
DEAL WITH PROBLEMS

- Early Intervention
  - Discuss with Employee Relations
  - Don’t Diagnose - Refer to EAP

- DOCUMENT
- DOCUMENT
- DOCUMENT



Questions



TAPES

TOTAL ARMY PERFORMANCE EVALUATION SYSTEM

AR 690-400, Chapter 4302

OBJECTIVES

- Goals
- Forms
- Rating Schedule
- General Tapes Information
- Appraisal Process
- Special Situations

TAPES GOALS

- Enhance civilian professional/leader development
- Empower employees
- Enhance total Army culture
- Facilitate mutual understanding
- Emphasize shared values
- Support Total Army Quality

FORMS

- **Senior System Civilian Evaluation Report Support Form (DA Form 7222), and Senior System Evaluation Report (DA Form 7222-1).**

- **Base System Civilian Performance Counseling Checklist/Record (DA Form 7223), and Base System Civilian Evaluation Report (DA Form 7223-1).**

RATING SCHEDULES

Senior System

GS/GM/WS 13 -15

1 Jul - 30 Jun

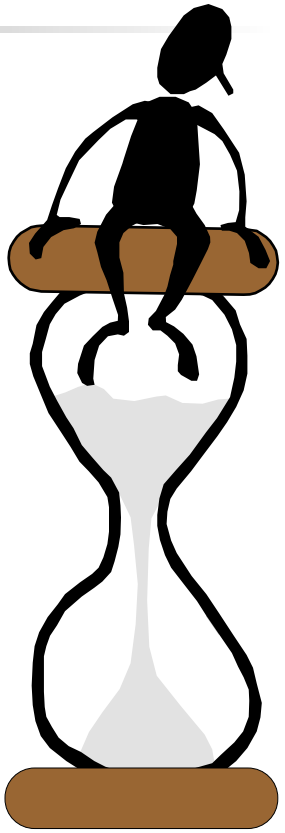
GS/WS 9 – 12

1 Nov - 31 Oct

Base System

GS/WG and WL/WS 8 and below

1 Nov - 31 Oct



GENERAL TAPES INFORMATION

- Civilian Evaluation Report - - **Overall rating of assigned performance objectives/responsibilities. The rating period is usually 12 months.**
- Performance objective/responsibility - - **A major duty of such importance that unacceptable performance would result in an overall unacceptable rating.**

THE APPRAISAL PROCESS

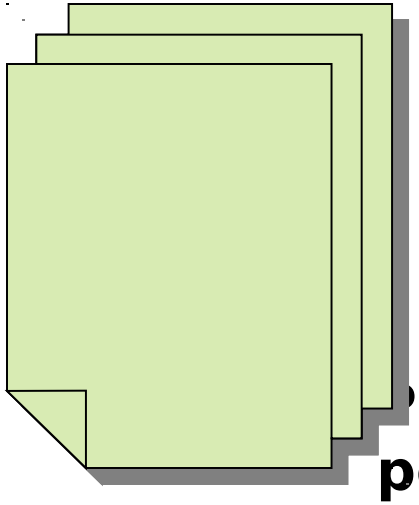
THE APPRAISAL PROCESS

- Initial counseling within 30 days of the rating period - -
  - **Review pre-established responsibilities/standards for Base System employees to assure understanding of expectations. Supplement as required.**
  - **Develop performance objectives with input from Senior System employees.**
    - **Usually no more than 5 to 7 objectives.**
    - **Should be measurable, attainable, challenging, and of similar importance.**
  - **Discuss the Army values.**
  - **Determine training needs and complete the IDP.**

THE APPRAISAL PROCESS (CONT)

During the rating period - -

- **Rater/ratee review checklist/support form to determine:**
  - What responsibilities/objectives have changed and make pen and ink changes, as necessary;
  - What has been accomplished and what needs to be done;
  - Any IDP training accomplishments and/or changes.



- **Provide feedback to ratee on mid-point performance – review objectives and overall rating criteria. Provide necessary coaching/counseling.**
- **Ratee and rater initial the support form.**

THE APPRAISAL PROCESS (CONT)

- **Completes evaluation using the checklist/ support form, and input from the ratee. Ratee may be asked to provide element ratings (e.g.., excellence, success) and explanation for rating input.**
- **Completes base system ratings on evaluation report, and annotates element ratings on the senior system support form.**
- **Determines final rating using rating formulas.**
- **Reviews and develops new checklist/support form and IDP.**

THE APPRAISAL PROCESS (CONT)

- At the end of the rating period rater - -

- Approves ratings of Successful Levels 2 and 3 and Fair; higher level review required (except commanders) for Successful Level 1 and Unsuccessful ratings.

- Coordinates proposed ratings of Successful Level 1 and Unsuccessful ratings with senior rater before discussions with ratee.

PERFORMANCE OBJECTIVES AND RELATIONSHIPS

- Should be *consistent* with job description and support mission and vision.
- *All objectives* are critical; therefore, failure in an objective is failure in the job.
- Should be specific, measurable, attainable, realistic, time-bound, and meaningful.
- SMART

PERFORMANCE INDICATORS

Quantity - Completes 25 reports.

- Quality - Completes 25 reports with NMT 2 corrective actions.
- Timeliness - Completes 25 reports per week.
- Results oriented - Assures reports are completed error free and ready for dispatch by __.

EXPRESSING OBJECTIVES

- Absolute - No errors permitted; usually not acceptable.

Examples: No typing errors (not acceptable); One plane crash is failure (acceptable)

- Percentages - Difficult to administer.

Example: 95% error free.

- Ranges - Recognizes range of acceptable performance.

Example: Accomplishes between 30 and 35 reports per week.

OBJECTIVE RATINGS

- EXCELLENCE. ***Consistently*** exceeds level described by the standards and documented expectations; *Frequently* produces more than expected.
- SUCCESS. ***Usually*** performs at the level described by the standards and documented expectations. Quality/quantity of accomplishments are at expected levels. Strengths clearly outweigh weaknesses.
- NEEDS IMPROVEMENT. ***Sometimes*** performs at the level described by the standards and documented expectations. However, fails enough so that weaknesses slightly outweigh strengths.

OBJECTIVE RATINGS (Cont)

- FAILS. ***Frequently*** fails to perform at levels described by standards and documented expectations. ***Rarely*** achieves expected results. Weaknesses clearly outweigh strengths.

- NOT RATED. May be rendered when employee has not had an opportunity to perform.

OVERALL RATING FORMULAS

- Successful Level 1 - **Excellence in 75% or more of objectives (Senior) or 3 or more responsibilities (Base). Supervisor excellence in either leadership or EEO.**
- Successful Level 2 - **Excellence in 25 - 74% of objectives (Senior), or 1 or 2 responsibilities (Base). Supervisor excellence in leadership or EEO.**
- Successful Level 3 - **Success in all objectives, or excellence in no more than 24% of objectives.**

  Supervisor with success in leadership or EEO.

OVERALL RATING FORMULAS (Cont)

- Fair - Needs improvement in 1 or more objectives/responsibilities.
- Unsuccessful - Fails in 1 or more objectives/responsibilities.

SPECIAL SITUATIONS

- **When temporarily detailed or promoted for 120 or more days in a rating period.**
- **When rater or ratee leaves the organization after 120 days under a performance plan, except if in the last 120 days of the rating period - - then earlier annual evaluation report, or**
- **Information considered when completing the annual appraisal.**

SPECIAL SITUATIONS (CONT)

Probationary Employees

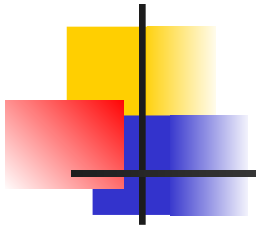
- **New employees. Used to evaluate performance, conduct and general character traits.**
- **New supervisors and Managers. Used to evaluate a new appointee on supervisory or managerial responsibilities.**
- No right to appeal or grieve determinations
- Closer supervision and performance/conduct reviews monthly

SPECIAL SITUATIONS (Cont)

- Performance problem – – **Inability of an employee to successfully perform a performance objective.**
  - "Needs Improvement" - - **Ratee's performance sometimes does not meet standards. Closer supervision via an unstructured PIP. Failure could lead to reassignment.**
  - "Fails" - - **Ratee's performance in one or more performance objectives/responsibilities frequently fails to meet the standard. Ratee placed on a PIP. Failure could lead to removal, demotion or reassignment.**

SPECIAL SITUATIONS (Cont)

- Performance improvement plan (PIP) **- -An opportunity period (usually about 90 days) which may include more definitive standards, training, and regular counseling session.**
- Inability to rate - -
  - **Extend the rating period to achieve the minimum 120 days under a support form/checklist and rate the employee**
  - **In the meantime, the most recent rating will remain in effect.**



Questions???